

Bhaskaran Vs. Additional Income-tax Officer, Ernakulam.

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Court : Kerala

Decided On : Oct-11-1961

Reported in : [1963]47ITR334(Ker)

Appeal No. : Appeal against the order of Vaidialingam J. in O. P. No. 662 of 1960.
A. S. No. 926 of 1960

Appellant : Bhaskaran

Respondent : Additional Income-tax Officer, Ernakulam.

Judgement :

M. S. MENON, Ag. C.J. - This is an appeal against the judgment of Vaidialingam J. dismissing O. P. No. 662 of 1960. By that petition under article 226 of the Constitution the appellant sought the cancellation of two orders, one dated February 11, 1960, and another dated April 26, 1960.

The order of February 11, 1960, was an order of assessment under section 23(4) of the Indian Income-tax Act, 1922, for the assessment year 1959-60 in respect of the appellants income for the accounting period 1958-59. The order of April 26, 1960, was an order rejecting the appellants request to deal with the matter afresh in view of a return filed by him on February 15, 1960.

The assessment under section 23(4) was made on February 11, 1960. It is common ground that the appellant did not comply with the notices under sub-section (2) and (4) of section 22 of the Act and that his non-compliance was the

basis for the best judgment assessment under sub-section (4) of section 23.

Sub-section (3) of section 22 of the Act provides :

'22. (3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-section, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.'

The assessment in this case, as already stated, was on February 11, 1960. The order of assessment was served upon the appellant only on February 23, 1960. Before that date, on February 15, 1960, the appellant filed a return and his contention is that that return should have been considered and an assessment made on its basis. It was this contention that was negated by the second of the two orders challenged, namely, the order dated April 26, 1960.

The answer to the controversy depends on the meaning to be assigned to the words 'before the assessment is made' occurring in sub-section (3) of section 22. If the assessment has to be considered as made on February 11, 1960, the return filed on February 15, 1960, was out of time and will not enter into the picture. If, on the other hand, it has to be considered as made only on February 23, 1960, the return it has to be considered as made only on February 15, 1960, was in time and will arise for consideration.

In *Muthiah Chettiar v. Commissioner of Income-tax*, Rajamannar C.J. said :

'If a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore must be presumed to have had knowledge of the order.'

This statement of the law has been approved by the Supreme Court in its recent judgment in Civil Appeals Nos. 25 and 26 of 1958. Since reported as *Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer*. In that case the Supreme

Court discussed the case law on the subject and said :

'... where the rights of a person are affected by an order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by the reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned.'

What we are concerned with, howsoever, is not the starting point of a period of limitation but the expiry of a period of grace granted to the assessee in spite of his default an terminating - automatically - on an assessment being made. We see no reason to hold, in such a case, that the making of the assessment is not when the officer does so, but when the order is communicated to the assessee.

It follows that the appeal should fail and has to be dismissed. The appeal is dismissed with costs. Advocates fee Rs. 100.

Appeal dismissed.

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